

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 UNITED STATES OF AMERICA)
5 VS) No. 3:16-00162
6 JAMES C. MCWHORTER)

7
8
9 BEFORE THE HONORABLE ALETA A. TRAUGER, DISTRICT JUDGE

10 TRANSCRIPT OF PROCEEDINGS

11 December 16, 2016
12

13 **APPEARANCES:**

14 For the Government: S. CARRAN DAUGHTERY
15 Asst. U.S. Attorney
16 110 Ninth Ave S., Suite A961
Nashville, TN 37203

17 For the Defendant: MICHAEL C. HOLLEY, ESQ.
18 Federal Public Defender's
Office
19 810 Broadway, Suite 200
Nashville, TN 37203

20
21
22 **Roxann Harkins, RPR, CRR**
23 Official Court Reporter
24 801 Broadway, Suite A837
Nashville, TN 37203
615.403.8314
25 roxann_harkins@tnmd.uscourts.gov

I N D E XGovernment witness**ADRIAN ROMANIUK**

Direct Examination By Ms. Daughtrey	5
Cross-Examination By Mr. Holley	7

Defense witness**O'BRIAN CARTER**

Direct Examination By Mr. Holley	8
Cross-Examination By Ms. Daughtrey	11

E X H I B I T S

Government No. 1....Police reports from IN	4
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Defense No. 1....Memo received in discovery by	12
defense	

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3 The above-styled cause came to be heard
4 on December 16, 2016, before the Hon. Aleta A.
5 Trauger, District Judge, when the following
6 proceedings were had at 3:33 p.m. to-wit:

7
8 THE COURT: Good afternoon. We're here
9 on sentencing in the United States versus James C.
10 McWhorter. We have Carrie Daughtrey for the
11 government and Michael Holley for Mr. McWhorter.

12 Mr. McWhorter, have you read the
13 presentence report?

14 THE DEFENDANT: Yes, Your Honor, I have.

15 THE COURT: Feel you understand it?

16 THE DEFENDANT: Absolutely, yes,
17 Your Honor.

18 THE COURT: Looks as though there are no
19 issues on the contents of the presentence report or on
20 the guideline calculations, so I'm going to accept the
21 presentence report as my findings of fact on all
22 issues and on the application of the guidelines.

23 The offense level is a 7, the criminal
24 history category is V. The resulting guideline range
25 is 12 to 18 months with one to three years of

1 supervised release.

2 The defendant is requesting a five-year
3 probationary sentence with the first 12 months to be
4 in the halfway house and 240 hours of community
5 service working for a prison publication. The
6 defendant -- the government is seeking 14 months of
7 custody.

8 Are there any witnesses today?

9 MS. DAUGHTREY: Your Honor, the only
10 witness I have is Adrian Romaniuk -- I just spaced on
11 that -- to testify very briefly. In advance of that,
12 I would like to submit as Government Exhibit 1 the
13 police reports from Indiana regarding the --

14 THE COURT: Okay.

15 MS. DAUGHTREY: Police reports and other
16 documents regarding the --

17 THE COURT: Does the defense have those?

18 MS. DAUGHTREY: Yes.

19 MR. HOLLEY: Your Honor, I received it a
20 minute ago.

21 THE COURT: Okay. All right. We'll make
22 this Government Exhibit 1. Let me have a moment to
23 look at this.

24 (Government Exhibit No. 1 was admitted.)

25 MR. HOLLEY: Your Honor, I noticed that

1 Mr. McWhorter's Social Security number is on this. I
2 don't know if these were filed, if these are
3 accessible to the public or not. I'm not sure if the
4 same rules --

5 THE COURT: No, the exhibits are not
6 accessible to the public, but thank you.

7 (Pause in proceedings.)

8 THE COURT: Okay. We'll make this
9 Government Exhibit 1.

10 MS. DAUGHTREY: I would call Detective
11 Adrian Romaniuk.

12 THE COURT: All right.

13 **ADRIAN ROMANIUK**

14 called as a witness, after having been first duly
15 sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 BY MS. DAUGHTREY:

18 Q. Could you state your name for the record
19 and tell us where you're employed.

20 A. My name is Adrian Romaniuk, and I am a
21 Deputy US Marshal with the United States Marshal
22 Service here in the Middle District of Tennessee.

23 Q. And is this your case, this James C.
24 McWhorter case?

25 A. I have not been assigned this case, but I

1 have been briefed on the information regarding this
2 case.

3 Q. And who is the lead deputy on this case?

4 A. The lead investigator is Christopher
5 Burt, another deputy here in the same district.

6 Q. He's not available to be here today --

7 A. That's correct.

8 Q. -- because of some law enforcement work
9 he's doing; is that correct?

10 A. Correct.

11 Q. And he told you some information about
12 the case in preparation for today; is that correct?

13 A. That's correct.

14 Q. All right. And as a result of what he
15 told you, did you call CheckSmart up in Indiana and
16 speak with them?

17 A. I did. One correction. The CheckSmart
18 corporate headquarters that I called is in Ohio. And
19 I did speak with them yesterday and as well this
20 morning.

21 Q. Okay. And were you able to determine
22 whether or not they ever got the money that was given
23 to Mr. McWhorter back on November 25 of last year, the
24 \$1,459.96?

25 A. I did speak with them. I spoke with a

1 Dan Perry of the corporate security and fraud
2 department within CheckSmart. He advised me that
3 there is still a balance pending of \$1,479.96, which
4 is the amount you mentioned, plus a \$20 returned check
5 fee.

6 Q. Okay.

7 MS. DAUGHTREY: Thank you very much.

8 THE COURT: Any cross?

9 **CROSS-EXAMINATION**

10 BY MR. HOLLEY:

11 Q. Is it correct, I gather, from these
12 reports and what you said that this check was returned
13 for insufficient funds?

14 A. I don't know why it was returned. I was
15 told that the -- there is an amount pending on a
16 returned check. I don't know the specifics.

17 Q. So it's entirely possible it was returned
18 for insufficient funds?

19 A. I don't know.

20 Q. That's possible; right?

21 A. Anything's possible.

22 Q. You don't know why it was not honored;
23 right?

24 A. I don't know why it was returned. I just
25 have a returned check fee.

1 MR. HOLLEY: Okay. That's all.

2 THE COURT: You may step down.

3 *****WITNESS EXCUSED*****

4 THE COURT: Any other witnesses from the
5 government?

6 MS. DAUGHTREY: No, Your Honor.

7 THE COURT: Any witnesses from the
8 defense?

9 MR. HOLLEY: Your Honor, I would like
10 to -- I'd like to call Mr. Carter.

11 THE COURT: Okay.

12 MR. HOLLEY: O'Brian Carter.

13 THE COURT: Okay.

14 **O'BRIAN CARTER**

15 called as a witness, after having been first duly
16 sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 BY MR. HOLLEY:

19 Q. Mr. Carter, what is your job?

20 A. Investigator.

21 THE COURT: Can we have a full name,
22 please?

23 MR. HOLLEY: Oh, I'm sorry.

24 THE WITNESS: Torrado O'Brian Carter.

25 T-o-r-r-a-d-o, O'Brian, O apostrophe B-r-i-a-n, last

1 name Carter, C-a-r-t-e-r.

2 BY MR. HOLLEY:

3 Q. And Mr. Carter, you're an investigator
4 with the Federal Public Defender?

5 A. That is correct.

6 Q. And were you assigned to work on
7 Mr. McWhorter's case?

8 A. Yes, sir.

9 Q. Now, at some point in September did I ask
10 you to talk to an attorney named Jeffery "Chip"
11 Frensley?

12 A. Yes, sir.

13 Q. And what was that about?

14 A. Picking up Mr. McWhorter's property.

15 Q. What property was that?

16 A. Some computer equipment.

17 Q. And what type of computer equipment was
18 that?

19 A. From my understanding it was the computer
20 equipment that Mr. McWhorter used to make fake
21 identifications.

22 Q. And he used that equipment years ago in
23 his old federal case; right?

24 A. That's my understanding.

25 Q. And Mr. Frensley was his attorney in the

1 old federal case?

2 A. Yes, sir.

3 Q. And did Mr. Frensley explain to you how
4 he came into possession of it?

5 A. Yes, sir.

6 Q. How was that?

7 A. At the end of the case the property was
8 given to him, I believe, by agents. And he held the
9 property there with him in his office.

10 Q. Okay. And at least one of these was an
11 expensive printer for printing fake -- for printing
12 IDs; right?

13 A. That's correct.

14 Q. And did Mr. Frensley tell you if he
15 offered to -- told Mr. McWhorter he could come and
16 pick it up or what he tried to do with it?

17 A. Yes, sir.

18 Q. What did Mr. Frensley say about that?

19 A. He offered several attempts for
20 Mr. McWhorter to come and pick up his property.

21 Q. And did Mr. McWhorter ever come and get
22 it?

23 A. No, sir.

24 Q. And where is that property now?

25 A. It's in our office at 810 Broadway,

1 Suite 200.

2 Q. Did Mr. McWhorter give us permission just
3 to destroy it?

4 A. Yes, sir.

5 MR. HOLLEY: That's all.

6 THE COURT: Okay. Any cross?

7 **CROSS-EXAMINATION**

8 BY MS. DAUGHTREY:

9 Q. That's a 10-year-old printer; is that
10 correct?

11 A. I'm not sure of the age of the printer.

12 Q. But it was from the time that he was
13 committing the fraud that he was prosecuted for in the
14 federal case; correct?

15 A. That's my understanding, yes.

16 MS. DAUGHTREY: That's all I have.

17 THE COURT: Anything else?

18 MR. HOLLEY: No questions, Your Honor.

19 THE COURT: You can step down. Thank
20 you.

21 *****WITNESS EXCUSED*****

22 THE COURT: Any other witnesses?

23 MR. HOLLEY: No witnesses.

24 THE COURT: Okay. I'll hear any further
25 argument. I'll let the defense go first. And also,

1 Mr. McWhorter, you have an opportunity to address the
2 Court and tell me anything you want me to hear before
3 I sentence you.

4 MR. HOLLEY: Your Honor, I also have one
5 exhibit and one other...

6 THE COURT: Okay.

7 MR. HOLLEY: This exhibit, Your Honor, is
8 a memo from -- that I received in the discovery. You
9 can see by the date stamp. And I guess I'll just
10 explain why I'm submitting it now. Do you want to
11 read through it first?

12 THE COURT: Yeah, let me read it.

13 MR. HOLLEY: Okay.

14 (Pause in proceedings.)

15 (Defense Exhibit No. 1 was admitted.)

16 THE COURT: Okay, go ahead.

17 MR. HOLLEY: Your Honor, there's been
18 some suggestion in the government's sentencing
19 memorandum that the Strategic 1 Company didn't exist
20 in any sense. Basically the last paragraph of this
21 memo shows that the marshal, Chris Burt, went to the
22 building on Church Street and he talked to a
23 receptionist who did know Mr. McWhorter worked there,
24 had worked there. She hadn't seen him for about four
25 weeks and that she had seen other people who worked

1 for Strategic 1 there more recently.

2 I think that helps -- it's kind of a
3 small thing, Your Honor, but I think it helps
4 substantiate that this business was not just -- it was
5 not a fraud. It was set up by Mr. McWhorter's friends
6 so he could operate as an independent contractor
7 doing, like, paralegal-type of work.

8 THE COURT: Set up by his friends.

9 MR. HOLLEY: Yes, Your Honor. I mean,
10 that's where he would go to work. The letter from
11 Tennyson and Wiggington refers to work that he did for
12 them previously.

13 THE COURT: Is this a collection
14 business?

15 MR. HOLLEY: Oh, no, Your Honor.

16 THE COURT: What did he do for them?

17 MR. HOLLEY: He -- they handled criminal
18 kind of cases, criminal, civil. I think they do all
19 sorts of things, Your Honor, but he mainly helped
20 with -- I guess he mentioned a malpractice lawsuit,
21 but he knows a lot about criminal law. He did a lot
22 of work as a jailhouse lawyer. And really, his
23 knowledge is really expansive.

24 THE COURT: What did he do for this
25 Strategic company?

1 MR. HOLLEY: For Strategic, Strategic
2 would receive -- my understanding of it is, Strategic
3 would receive -- the halfway house wouldn't let him
4 just work as an independent contractor, so he had to
5 identify his employer.

6 So they set up Strategic to be his
7 employer, and then when he did work for people, they
8 could pay him through Strategic. So Strategic
9 existed, they had an office space. They had a bank
10 account.

11 This -- unfortunately, this last check he
12 cashed, there was insufficient funds by the time he
13 cashed it, but it was his method of -- of being able
14 to do good work, work that would lead to a career.

15 THE COURT: You mean Tennyson and
16 Wiggington paid him through this Strategic shell?

17 MR. HOLLEY: I believe whoever he worked
18 for, I know he did some work for Tennyson and
19 Wiggington.

20 THE DEFENDANT: Chip Frensley.

21 MR. HOLLEY: I believe he did some work
22 for Mr. Frensley as well. I --

23 THE COURT: Like what kind of work?

24 MR. HOLLEY: Paralegal work, legal
25 research, writing.

1 THE DEFENDANT: Writing memorandums, I
2 assisted a tremendous amount in a medical malpractice
3 case that Tennyson and Wiggington were working on.

4 THE COURT: I didn't hear that.

5 MR. HOLLEY: He had mentioned to me
6 before a medical malpractice case. He, I mean, does
7 legal research, he does writing, I'm sure the
8 malpractice case probably involved document review and
9 so forth like that. He did paralegal type of work.
10 And he is, I believe, very capable.

11 I mean, I submit that just to show that
12 there was an office space, there was an office space
13 rented, and he paid for the office -- Strategic 1 paid
14 for the office space. And there was another person
15 from the halfway house that worked through Strategic 1
16 as well. And that's -- there was a mention of that
17 somewhere in these papers, I believe.

18 Now, I should address -- well, there was
19 one other request I wanted to make. This other
20 exhibit I brought is a copy of the letter that was
21 submitted on Mr. McWhorter's behalf at his previous
22 sentencing. And it's in the file. I'd rather not
23 actually file it as an exhibit because I don't want
24 it -- it's filed under seal in the other case, but the
25 Court could take judicial notice of it.

1 THE COURT: That's fine. I can just read
2 it. Has -- Ms. Daughtrey, I presume, has seen it?

3 MS. DAUGHTREY: No, I have not.

4 THE COURT: Okay.

5 MR. HOLLEY: Your Honor, it's the
6 document that we asked permission to access.

7 THE COURT: Well, I think you asked to
8 see the whole PSR, didn't you?

9 MR. HOLLEY: We asked to see this --
10 actually, I just asked to see the sentencing memo, and
11 then I believe Ms. Daughtrey asked to see the
12 government's sentencing memo. This was attached to
13 it. And the third paragraph shows the real danger
14 that he was running by testifying.

15 THE COURT: All right. Let me read this.

16 (Pause in proceedings.)

17 THE COURT: Okay. I'll give this back to
18 you.

19 MR. HOLLEY: Okay, Your Honor. I won't
20 repeat everything I said in my memo, of course.

21 THE COURT: Thank you. I have read it.

22 MR. HOLLEY: Yes. I know you've read it.
23 I think I will just mainly respond to what the
24 government filed last night, a few statements in
25 there.

1 THE COURT: Yes.

2 MR. HOLLEY: One, the government halfway
3 asked the Court to decide that he committed a crime in
4 Indiana. Now, that --

5 THE COURT: Well, I sort of have a report
6 that indicates he did commit a crime in Indiana.

7 MR. HOLLEY: Yes, Your Honor. The
8 charges were dropped. And, you know, I was just
9 handed this minutes ago. And I think reading the
10 narrative supplement you can see a lot of reasons why
11 the charges were dropped. I mean, for one thing --

12 THE COURT: Well, namely because he's
13 been taken into federal custody because he escaped
14 from federal custody. That's probably why the charges
15 were dropped. They're kind of minor in comparison to
16 what he faces here.

17 MR. HOLLEY: It could have been,
18 Your Honor. I'm sure that happens in some cases, but
19 the government hasn't proved that's what happened.
20 They easily could have called a prosecutor in Indiana
21 if they wanted to prove that's what happened. It
22 didn't -- they haven't proved it and they should have
23 been objecting to this 35 days ago when the
24 presentence report came out. Or at least they should
25 have brought it up in a memo a week ago.

1 THE COURT: They claim he was arrested on
2 a fraud charge. You don't disagree with that, do you?

3 MR. HOLLEY: No, I don't, Your Honor.

4 THE COURT: Okay.

5 MR. HOLLEY: And the police report, this
6 narrative supplement itself, there's a lot of reasons,
7 you can see why this -- they probably figured out that
8 this was not a bogus check, it was not a fraudulent
9 check. It was an insufficient fund check written to
10 Mr. McWhorter with the halfway house address for his
11 address. And --

12 THE COURT: That he attempted to pass
13 months after he left the halfway house.

14 MR. HOLLEY: Yes, Your Honor. And by
15 that time apparently the account didn't have as much
16 money in it as it had when the check was issued.

17 And, you know, the basis for the
18 prosecutor bringing the charge involves him talking to
19 the US Marshal Service and being told that
20 Mr. McWhorter had actually formed Strategic 1, which
21 is who wrote the check, before he was incarcerated.
22 This is -- and that cashing fraudulent checks on
23 behalf of this company was part of the crime spree
24 that landed him in federal prison. I mean, they don't
25 know what they're talking about, Your Honor.

1 They're thinking that Strategic 1 was a
2 company that -- and he was writing bad checks for
3 Strategic 1, which got him the 10 years in federal
4 prison. That's not what happened at all, as we know
5 from this presentence report, from his other federal
6 presentence report.

7 He was creating fake IDs and making up
8 checks and cashing them at grocery stores and things
9 like that. The prosecutor -- the Indiana prosecutor
10 calls down to Tennessee and gets absolute
11 misinformation.

12 Someone tells him -- someone tells the
13 prosecutor that Strategic 1 was never a functioning
14 company and was nothing but a scam to aid in
15 Mr. McWhorter's escape, which is likewise absolute
16 nonsense. It was a functioning company. It was a way
17 for him to work while he was at the halfway house, do
18 some decent work while he's there. And nothing but a
19 scam to aid his escape is just ridiculous, Your Honor.
20 He's --

21 THE COURT: Okay. Okay.

22 MR. HOLLEY: He can walk away from the
23 halfway house whenever he wants. So the prosecutor is
24 given bad information and when it comes time to face
25 the charge, when the charge comes to court, he drops

1 it. Now, if we wanted to know why the prosecutor
2 dropped it, the federal prosecutor here should have
3 established that.

4 Now, there are other things in the -- in
5 the memo that are somewhat new.

6 THE COURT: How about the fact that he
7 didn't seek treatment for his Hepatitis C during the
8 whole time he was at the halfway house?

9 MR. HOLLEY: Yes, Your Honor. He did
10 seek it. And I'll proffer that information and I
11 guess Mr. McWhorter would tell you himself. In my
12 memo itself it explains how he sought treatment as
13 soon as he was in the halfway house. My memo explains
14 he's not eligible for Obamacare while he's in BOP
15 custody. So he wasn't able to get it that way.

16 Now, it takes him some time to figure out
17 how to -- how to get the drugs on his own. He had to
18 get tested, he had to find someone that would take
19 him. He had to apply to Gilead Support Path. I guess
20 Gilead is the producer of this \$85,000 drug. It's not
21 something that you can just do in an instant.

22 And it's not too surprising that he was
23 out of the halfway house starting in I guess it was
24 September in Baltimore until his friend was murdered,
25 and yes, I assume he wasn't seeking treatment then.

1 While he was in the halfway house he couldn't get it,
2 at least through insurance. And then he starts trying
3 to get treatment and it takes a few months to set up.
4 And really, it's unfortunate that -- the timing of
5 everything, but the drugs were actually there and
6 waiting for him. The Michiana Clinic confirms that
7 they had the drugs and they sent them back.

8 So, you know, there's absolutely no doubt
9 that he has Hepatitis C and that his viral load is
10 getting higher and higher and that he's been seeking
11 treatment from the BOP and the BOP is not going to pay
12 for this treatment.

13 The judge gave him a top of the guideline
14 sentence. There's really no chance they're going to
15 give him that treatment. And so the sooner --
16 Hepatitis C, from what I've learned from some of the
17 stuff I filed, it's something that's chronic and it
18 will be with him and it develops at different paces in
19 different people.

20 Each day it goes on, he gets worse and is
21 in danger of developing bad -- bad situation. And the
22 Gilead Support Path is always in danger of being shut
23 down. That's not something everyone can get into.

24 You know, the government faults him for
25 not paying his restitution, despite having access to

1 this trust. He does not have access to the trust. As
2 the presentence report says, it's a spend thrift
3 trust. He's never believed that he could get access
4 to it.

5 When the attorney contacted him in prison
6 about it, he was told it was a spend thrift trust and
7 he can't have any of it for anything while he's under
8 a sentence. So he can't have it. He can't get it.

9 And earlier today he sat down with the
10 government for a debtor's review, I guess is what it
11 was called, and told them everything he knows about
12 it. And they are going to get his paperwork from
13 Diersen. They called over to Diersen. They have a
14 package which probably has his paperwork in there.

15 He offered to let them look at his Core
16 Links emails, he's e-mailed with this lawyer a couple
17 times about it. He was notified about a trust, and he
18 honestly told them about it. And to have that turned
19 against him is -- is unfair.

20 He also told Ms. Phillips here today
21 about a couple of watches that he could get -- has a
22 claim to that -- I forget the name of the county. The
23 county where he was arrested in the old federal case,
24 seized from him that may be worth a good amount of
25 money, maybe 15, \$20,000. And he won a court case

1 against them where they are supposed to give them
2 back.

3 And he's never got -- in talking with
4 him, he realized, well, I could help you get those
5 back or they could probably seize them back, because
6 he had to pay some kind of filing fee and jump through
7 hoops to try to get them beyond what he'd already
8 done.

9 So he's trying to turn over his funds.
10 He's happy to pay off that restitution, be happy if it
11 could come out of the trust, he does not care. And
12 the trust came from his father. His father died, they
13 were all estranged. His father died while he was in
14 prison, his mother died, his brother died, so he is
15 the last one to receive any of these fundings.

16 Now, so, Your Honor, those are the main
17 things that I saw in the response that conflicted with
18 what we've been saying. You know, really, it is
19 unfortunate that this happened to Mr. McWhorter. He
20 only had one left -- one month left at the halfway
21 house. He was doing very well. It's absolutely
22 believable that something like this happened. I mean,
23 why else would he run off like this? He had a job, he
24 was doing fine. And he only had to be there one more
25 month. And it's very unfortunate that that threw a

1 giant wrench in his life.

2 He has tried to cooperate with the
3 detective from Baltimore. And I'm guessing that what
4 happened is he told about how his friend was murdered
5 up there. The detective from Baltimore contacted us.

6 I'm guessing the government called to
7 Baltimore to try and prove that Mr. McWhorter was
8 lying about his friend, Eugene Nesbitt, being murdered
9 up there. I found Eugene Nesbitt on the Internet,
10 yeah, he was murdered on that date. Anyone could find
11 that.

12 Yes, the detective came down here on a
13 day's notice -- or he wanted to come down here
14 immediately. Interviewed Mr. McWhorter and he
15 confirmed, yes, Mr. McWhorter was with him just
16 apparently, I guess, minutes or a very short time
17 before Mr. Nesbitt was murdered and he gave him
18 confirming, valid information and some leads.

19 We didn't ask for anything. We didn't do
20 anything to try and protect Mr. McWhorter from
21 anything on this. He told him just flat out how it
22 was and how he was there. And that shows a
23 continuation of his efforts to rehabilitate. When he
24 turned against that man in prison who'd done the
25 double murder, that was an enormous betrayal of that

1 man in prison and a very dangerous one for
2 Mr. McWhorter.

3 He has been on the side of trying to do
4 things properly. He's learned to be a jailhouse
5 lawyer. He has -- and then in this case he's happily
6 trying to cooperate. As he is with the money. He's
7 trying to help them get the money back too. He's
8 happy to do those things.

9 And nonetheless -- you know, so it's
10 unfortunate he was thrown off. He has -- he is being
11 punished for it already. Before this sentence is
12 imposed today even, Your Honor. And I've explained
13 this in the memo.

14 He has lost roughly six months of RDAP
15 credit that he was getting. His sentence had been
16 shortened up to that one month from then date, and
17 he's lost that now. And it's reflected in his BOP
18 records.

19 And Michelle Fulgram from the BOP
20 confirmed for me that that's clearly what happened.
21 He used to be classified as an RDAP releasee. Now
22 he's classified as a good-time credit releasee.

23 As I've already touched on, the
24 Hepatitis C, it is a real issue for him, and that's
25 one of the reasons he wants to get out and get back on

1 track. As partial justification, sure he should have
2 come back. I think even if he had just left to use
3 drugs for eight months, you know, his guideline range
4 would still be the same. He doesn't need a
5 justification for leaving for our arguments to go
6 forward.

7 But as for his guideline range, the
8 government writes for a couple pages about all these
9 charges and details of arrests from many years ago.
10 True, he is a Category V. That's a very high
11 category. That's how he even gets in this range where
12 he is pushed way up into Zone C it is.

13 Most people committing this offense would
14 be in a lower zone, which would be Zone B or even A.
15 So he does have that past, but it's quite a ways
16 behind him. Except for this -- except for leaving the
17 halfway house, he's doing a wonderful job on release.

18 And he's got a plan. He's got a plan for
19 when he gets out. It's not many people who can say,
20 look, these two lawyers, they're ready to hire me.
21 It's a good job. He wants to get at it. He did a
22 little volunteer work for this Prison Legal News while
23 he was out before on his own volition, and we've
24 contacted them. They'd be happy to have him back. He
25 does a good job.

1 I submitted two samples, one was
2 miscopied, but he does good work for them and that
3 would be a great match for him in a way that he can
4 get back. Of course, when he was brought here, we
5 filed a motion to plead guilty immediately.

6 He's not trying to escape this charge or
7 get out of it somehow. He's willing to face up to the
8 responsibility for it. What we're asking for is not a
9 slap on the wrist, as the government calls it. He's
10 really taking quite a bit of punishment for this.
11 He's already getting the six months for losing RDAP.

12 For leaving the halfway house he's giving
13 up where he was, which is one month left in the
14 halfway house, for 12 more months is what he's asking
15 for. And 12 months in a halfway house is quite a long
16 time, from what people tell me. On top of that he'd
17 do the volunteer work.

18 It's a significant penalty for a crime
19 that did not endanger people or cause harm to people
20 or threaten people. I think it would be an
21 appropriate response to walk away, to extend his time
22 by basically 12, plus he's got that other RDAP time
23 served.

24 THE COURT: Okay, thank you.

25 MR. HOLLEY: That's our position,

1 Your Honor. I know Mr. McWhorter wants to address you
2 too.

3 THE COURT: Okay. Why don't I hear from
4 the government and then he can allocute.

5 Ms. Daughtrey?

6 MS. DAUGHTREY: Your Honor, Mr. Holley
7 makes much of Mr. McWhorter already having received
8 punishment on -- for this offense, but, in fact, what
9 he's -- what's happening is he got a break on his
10 original felonies -- or federal sentence. And so this
11 extra six months that he's getting is part of that
12 sentence, not -- not punishment for the escape per se.

13 Mr. Holley also makes much of the fact
14 that he only had one month left at the halfway house,
15 why would he run. But the information that he
16 provides in his sentencing memorandum, looking at
17 Document 21-2 page 1, at the very top it shows that
18 this computation data was figured in August of this
19 year.

20 And, in fact, according to the PSR, at
21 the time that Mr. McWhorter fled from the halfway
22 house, he believed he was going to be there until
23 April of 2016. So he did, in fact, have quite a bit
24 of time left there. I don't understand the
25 calculations on how they do that and why it changed,

1 but I think that's sort of a hollow argument.

2 Mr. McWhorter apparently got out in June
3 of 2015 and it wasn't until the following March,
4 according to -- according to his sentencing memorandum
5 in which he sought treatment.

6 We've got something at Document No. 21-3
7 from this doctor, which I checked to make sure it was
8 legitimate, and there is a group by that name at that
9 location, but they note in that letter that he came to
10 them in March of 2016. So he was out for quite a bit
11 of time before he sought the treatment.

12 And finally, I think one of the most
13 telling things about Mr. McWhorter and that I covered
14 quite a bit in my memo is not only does he have a
15 history of fraud, but it well appears that he has
16 continued with that fraud since he was released from
17 prison.

18 Mr. Holley read from the report that is
19 his Defense Exhibit No. 1. I'm not sure where he says
20 that there were any other employees -- where he sees
21 there were any other employees from Strategic 1
22 Consulting. Unfortunately, I don't have Chris Burt
23 here. I proffer that he would tell you that in doing
24 this research, that receptionist was not a
25 receptionist solely for Strategic 1. She had multiple

1 different little companies, one-room companies --

2 THE COURT: Kind of a suite.

3 MS. DAUGHTREY: A suite, exactly. And
4 she represented to him that Mr. McWhorter was the only
5 person she knew that was connected to that -- to that
6 business that she had seen. There's also information
7 that although he encouraged or hired people from the
8 halfway house, Diersen Charities, to work at that
9 company, my understanding is that nobody ever got
10 paid.

11 I think Your Honor was very astute in
12 looking at the check and noticing that it's being
13 issued on November 23 of 2016, which is two and a half
14 months after he left the Diersen Charities and he's
15 trying to cash it two days later.

16 I do think there may be some
17 misinformation about that company. The impression
18 I've gotten all along -- and I wish again that I had
19 the agent here, but he's in Murfreesboro working on a
20 police shooting investigation and not able to come. I
21 think that that organization was not -- or the company
22 was not a company that was created for the federal
23 charge before. I think that's incorrect that's in
24 there. Those -- those charges were based on other
25 fraudulent activity.

1 And then I completely lost my train of
2 thought, I'm sorry. But I do -- oh. So if you were
3 to excise that information out of the police report, I
4 still think these police reports still go to show that
5 there was very likely fraud going on. Not only this
6 company that's based in Nashville where this check is
7 issuing on November 23, but the fact that they called
8 and nobody would ever answer, nobody would get back
9 with them. They weren't ever able to recover it.

10 And even -- you know, here we are
11 almost -- or over a year later and they still haven't
12 recovered this money from this company, that this man
13 is pretty much the company. Or perhaps his girlfriend
14 is. It sounds like he wasn't allowed to work for
15 himself, so he may have put this company together and,
16 you know, had it in her name or something so that he
17 could say that he was working for a company.

18 But I think it's very clear that there
19 is -- that he's not been rehabilitated, that he really
20 is continuing to perpetrate fraud. And while I could
21 have brought people down from Indiana, I chose not to
22 because of the time-consuming expense of doing that,
23 but I would ask Your Honor not to change the guideline
24 sentence. I'm not asking -- or guideline calculation.
25 I'm not asking for that, but I am asking Your Honor to

1 take into consideration what was going on with that
2 here.

3 Mr. Holley also mentioned the debtor's
4 exam that was done this afternoon. I was not present
5 for that, but my understanding -- and I believe
6 Mr. Holley was there the whole time -- is that at some
7 point fairly recently he received \$64,000 from his
8 mother's life insurance while he was in prison.

9 Apparently he -- and these are his
10 representations at the time. Apparently he used
11 \$32,000 to pay off child support, which is very
12 commendable. He then spent \$11,000 in the prison
13 commissary. When asked about why he didn't pay any
14 money toward restitution, he said he wasn't required
15 to do so until he was on supervised release.

16 He then said that he spent \$7,000 on
17 attorney, \$2,500 on an attorney and \$2,000 on an
18 attorney. And that he left prison with \$4,200, which
19 he spent on clothes and phone when he was at the
20 halfway house.

21 So I think that goes a long way also in
22 sort of showing what his attitude is about this fraud
23 and making right and rehabilitating himself. And that
24 is that he really doesn't have much drive to do that.

25 And I think another very telling point is

1 that my understanding from the investigator in
2 Maryland who did come down and speak with
3 Mr. McWhorter and Mr. McWhorter was willing to talk
4 with him, but my understanding from that detective --
5 and I'm sure Mr. Holley is aware of this -- is that
6 the detective thinks that this person who was murdered
7 was engaged in fraudulent activity at or around the
8 time of the murder. So he was, if not involved
9 himself, hanging around with someone who was doing
10 something enough that he ended up getting murdered.

11 And, finally, it's interesting that even
12 if Mr. McWhorter fled the halfway house because he got
13 shot at and all we have is his -- you know, his
14 statement that that's the reason he left, which I
15 question, given his history of fraud, but even if that
16 is true, he didn't turn himself in, ever.

17 He was out until he was arrested eight
18 months later and I think that goes a long way also in
19 showing what his attitude is toward the criminal
20 justice system and what his responsibilities are. So
21 I do think that the recommendation by the probation
22 office of 14 months is appropriate. I think it's in
23 keeping with other types of cases that have been heard
24 in this district.

25 I did not do extensive research on them,

1 but I was able to discover that quite a few of those
2 sentences in that range were in your court, but also
3 with regard to the halfway house absconding, I think
4 it's probably pretty difficult to escape from prison
5 these days. So most of those are pending sentencings
6 and coming out into the halfway house.

7 So I would ask Your Honor to impose the
8 guideline range. I think it's appropriate in this
9 case given all of the factors here.

10 THE COURT: Thank you, Ms. Daughtrey.

11 MR. HOLLEY: Your Honor, may I respond?

12 THE COURT: Okay.

13 MR. HOLLEY: Your Honor, I believe the
14 rules of evidence and so forth at sentencing, there
15 are standards of evidence at sentencing, standards of
16 proof. Ms. Daughtrey says that all we have is his
17 statement.

18 All we have from the government is an
19 agreement to what's in the presentence report and the
20 few words from the agent today, which said the
21 check -- the check was not paid. It's still -- it's
22 still an outstanding balance. He doesn't know why the
23 charge was, if it was insufficient funds or whether it
24 was a completely fraudulent check. It doesn't appear
25 it was a completely fraudulent check. It's from the

1 old company. It goes back to all these addresses and
2 so forth.

3 The government's proof is just that,
4 well, the amount hasn't been paid back. Maybe these
5 companies wrote it off long ago and didn't want to
6 lift another finger to try and --

7 THE COURT: I don't really care about
8 that issue, Mr. Holley.

9 MR. HOLLEY: Okay.

10 Your Honor, so Ms. Daughtrey says a lot
11 of things here without any support. Even what she
12 says -- what Detective Matchett said. I don't
13 remember Detective Matchett saying that. I thought
14 that was why we agreed on a stipulation of what he
15 said. Otherwise I was going to ask --

16 THE COURT: What do you mean you agreed
17 on a stipulation of what he said?

18 MR. HOLLEY: I'm sorry, Your Honor. The
19 last page of the presentence report is an attachment.

20 THE COURT: Oh, yes.

21 MR. HOLLEY: That is what he -- that is
22 what we agreed upon, what Detective Matchett would
23 say. I may just pause to let you read it.

24 THE COURT: I read it, but let me scan it
25 again. Let me scan it again.

1 (Pause in proceedings.)

2 THE COURT: Okay.

3 MR. HOLLEY: If Mr. McWhorter wanted to
4 go out and commit fraud, he would have picked up his
5 equipment from his lawyer a long time ago. What --
6 what else. It's this police report itself that
7 mentions other residents of the halfway house signed
8 up to work there, it says but they were never paid.

9 THE COURT: Okay, I think I've really
10 heard enough, Mr. Holley.

11 MR. HOLLEY: Okay.

12 THE COURT: Unless you have something --
13 I'd like to hear from your client.

14 MR. HOLLEY: Okay. As I've said, it's
15 frustrating to see everything turned against him
16 when -- if Mr. McWhorter had reported the
17 misinformation that's in this report, they would be
18 saying it's part of a deliberate fraud and a scheme.
19 He cashed a check that bounced back. That's all he
20 did. That's all he did while on escape status.
21 That's all that's been proven.

22 THE COURT: That's all we know he did on
23 escape status.

24 MR. HOLLEY: Yes, Your Honor, it's true,
25 but the burden is on the government to prove things at

1 a sentencing. And they're just trying to guess a lot
2 of things.

3 Mr. McWhorter.

4 THE DEFENDANT: Good afternoon,
5 Your Honor. First I want to say that I am truly very
6 sorry for leaving the halfway house. You know, when I
7 left, everything that's in the PSI, all of that
8 happened. I know that it's -- you know, it's just my
9 word to say it. But in addition to me telling what
10 happened, you know, my best friend was murdered. And
11 I think that Ms. Daughtrey kind of discounted that to
12 a very large degree.

13 THE COURT: I didn't see any reference
14 anywhere to the fact that Mr. Nesbitt was your best
15 friend.

16 THE DEFENDANT: It's all throughout
17 the -- in the PSI it was mentioned, in the --

18 THE COURT: It mentioned he was a friend
19 or acquaintance. Didn't say he was your best friend.
20 Tell me where it says best friend. I think I would
21 have picked up on that.

22 MR. HOLLEY: Your Honor, it says it in
23 something Mr. McWhorter filed or a statement.

24 MS. WINFREE: It's paragraph 45,
25 Your Honor.

1 THE DEFENDANT: He definitely was my best
2 friend.

3 THE COURT: Okay. Sorry.

4 THE DEFENDANT: You know, the biggest
5 thing from what I've seen that you're concerned about
6 is that allegedly I waited a year to seek treatment
7 for the Hepatitis C. That's absolutely not true.
8 When I was at the halfway house, I was -- I attempted
9 to apply for the Affordable Healthcare Act and was
10 told I was unable to because I was still in BOP
11 custody.

12 They referred me to Meharry Medical
13 Center. And I -- I filed an affidavit in this case on
14 the bond motion where I detailed all this information.
15 I went to Meharry and Meharry told me that they don't
16 actually handle the Hepatitis C in that manner. They
17 outsource to a local gastroenterologist.

18 When I called and spoke to them, the
19 cheapest one I could find was \$1,500 up front at the
20 time, and I didn't have \$1,500. When I end -- when I
21 left the halfway house and got to Baltimore for that
22 month there, I did not seek treatment, I agree with
23 that. As soon as I got to South Bend, I located a
24 Dr. VanderHeyden. Incidentally I was -- my girlfriend
25 was going to the doctor because -- and that's when I

1 found Dr. VanderHeyden that he treated Hep C.

2 That was in December of 2015 that I
3 originally contacted his office and then they filed an
4 order for the blood work which was completed in
5 January of 2015. I didn't get to see the doctor until
6 March of 2016, but the initial contact with the doctor
7 was in November and December of 2015.

8 After I had the blood work, their office
9 found a place called TLC pharmacy down in Louisiana
10 that referred me to the Gilead Support Path. Filled
11 out all the paperwork for that and I got approved.
12 From the March date that I originally saw them, I
13 was -- I think I got approved in April, and the
14 earliest that they could get the pills to me would
15 have been June 16.

16 And, of course, May 27 I was arrested.
17 So I was unable to take the pills on June 27 -- or
18 June 16. I requested treatment at -- almost on a
19 monthly basis when I was in the BOP. I'm in a
20 constant low-level pain now from my liver. My viral
21 load is astronomically high at this point. 25 million
22 is supposed to be associated with jaundice. And
23 remember that the 7 -- or 19.7 million was almost a
24 year ago now that it was tested, and it's
25 progressively getting worse. I can actually run my

1 hand down my body and feel my liver now, and that's
2 not natural at all.

3 The BOP won't treat it. The local jails
4 won't treat it mainly because it's an \$85,000 program.
5 But I tried literally from the very first week that I
6 was out to try and get this treatment. I had asked
7 for it continuously when I was in prison. I even told
8 them that if I don't get it while I'm in prison I'm
9 going to get it when I get out.

10 In one of the documents that Mr. Holley
11 filed, it stated in there that I only had 14 months
12 left at the time and that it wouldn't be enough time
13 to be able to get the treatment. And if I'm given the
14 sentence that Ms. Daughtrey is requesting, I won't be
15 able to get the treatment.

16 It's another 14 -- actually, it will
17 another two and a half years of liver damage that it's
18 constantly -- at this point with my ALT and ASO -- AST
19 scores, I'm at compensated cirrhosis.

20 Because my liver's swollen, it is
21 considered cirrhosis, but my body's still compensating
22 for the damage that the hepatitis is causing. When it
23 goes into decompensation, nobody can say. I know
24 Mr. Holley spoke with several different experts when
25 we were preparing for this in the beginning, and

1 nobody can say what's going to progress fast, what's
2 going to progress slow, nobody knows.

3 Currently my viral load has been
4 progressive since the first time I found it is at an
5 average rate of about 4.5 million per year. If that
6 continues to be the case -- and I don't know because I
7 haven't been tested in over a year on it, but if that
8 continues to be the case, I'm almost to that point
9 that it's going to be decompensated cirrhosis, which
10 can turn into liver cancer, many other things.

11 And it's -- I completely understand that
12 what I did was wrong. I know that in hindsight I
13 should have immediately called the police. I think my
14 biggest fear was that I would be immediately taken
15 back into custody, even though I'd done nothing wrong.
16 They couldn't have left me at the halfway house
17 knowing that something happened. They would have
18 taken me back in.

19 I'd just got through serving nine
20 calendar years and then to get taken back into custody
21 for something that I had no control over and I just --
22 I panicked. I mean, you know, there's -- there's --
23 there's no way to describe how that felt. I'd never
24 been shot at. I'd never been involved in anything
25 even close to something like that. And, you know,

1 when we -- circumstantially, I left all my property
2 at -- all my clothes, you know, everything that I
3 owned with the exception of the clothes I was wearing
4 on my back at the halfway house, all that equipment
5 that was at Chip Frensley's office.

6 If I was just going to commit crimes --
7 you know, Ms. Daughtrey said it's a 10-year-old
8 printer, but that printer worked. That printer worked
9 just fine 10 years ago, and it could have done
10 everything that I did before. If that's all I wanted
11 to do, I could have grabbed it and went.

12 I wouldn't have left anything at the
13 halfway house because I could have took it. It's one
14 of those things that if I was planning on running, if
15 this was something that was really orchestrated that
16 I'm going to do this and I'm just a bad guy, I
17 wouldn't have had to leave anything. I wouldn't have
18 had to take off.

19 It wouldn't have been just a snap
20 decision and I'm done. If I just wanted to leave the
21 halfway house, all I had to do was ask for a haircut
22 pass and I could leave. Nobody's going to question
23 you, nobody's going to ask what are you doing or
24 anything, you just go. And if you don't want to come
25 back, you don't come back. That's, I guess, the trust

1 that's given to you at the halfway house.

2 So to me when, you know, people talk
3 about the company was fake or this or that, it's --
4 it -- I almost want to say slightly insulting. And I
5 understand that because of my past everybody thinks
6 that I'm just trying to do bad things, but this was a
7 legit company. I was doing legitimate paralegal work.

8 Me and now Judge Frensley had just signed
9 up a 2255 -- or a 2241 case that I started in prison.
10 We signed up, we got everything, you know, all the --
11 the contracts signed with the client. And
12 Mr. Frensley and I signed contracts between, you know,
13 his company and Strategic 1, what it would get paid,
14 how much work I would be doing, so on and so forth.

15 This was legit. I worked for
16 Mr. Frensley, Casey Long out of the Franklin.
17 Tennyson Wiggington, those were the biggest ones. And
18 my work was good enough with them that they want to
19 hire me now. When I got arrested, you know, I knew
20 that I couldn't -- I didn't want to get out and wing
21 it; whereas, last time when I got out, I just kind of,
22 you know, was just going with it as it was coming to
23 me. And this time I want to make sure that I have a
24 very solid plan. So I made sure that I got a job.

25 I know that the Gilead Support Path is

1 still available where I can get it. The 12 months in
2 the halfway house gives me enough time to where I can
3 save up and be able to get my own place because I
4 don't have anybody left.

5 THE COURT: Why can't you get these drugs
6 when you're in the Bureau of Prisons?

7 THE DEFENDANT: They just won't give it
8 to me. I wish that we could say why. But if you look
9 at the medical records that we've submitted, I've been
10 asking since late 2010, early 2011 and they just won't
11 do it. You know, it's either we don't have a
12 full-time doctor or we're going to refer you for
13 treatment or you just don't have enough time left.

14 If I'm given the 14-month sentence that
15 is requested, they've already -- in the paperwork from
16 Dr. Ash -- when I was at FCC Tucson, she explicitly
17 says, there's only 14 months left, you probably don't
18 have enough time for the screening.

19 The way the process works there, they've
20 got to take all your blood work, they blood work --
21 I'm sorry, when I get excited, I talk fast, I
22 apologize. The BOP had said that they have --
23 pursuant to their policy, they have to take recent
24 blood work within 90 days. And then after that it has
25 to be submitted to a committee which takes anywhere

1 between 90 days to 180 days in order to approve
2 because of the cost of the medication.

3 I believe Mr. Holley says it's 85,000. I
4 had thought it was 65,000, but, you know, he got that
5 number from somewhere reliable, I'm sure. They just
6 don't want to do it. I mean, it's such an expensive
7 medication that they just don't want to do it.

8 And no matter how much I asked, it was
9 no, no, no, no, we're just not going to do it. And if
10 I'm sentenced to prison now, they're still not going
11 to do it. But the Gilead Support Path program, we
12 know it's available. We know that I can get it. I've
13 already been approved, and we know that I can get the
14 treatment.

15 It's a three-month course of treatment
16 and there's a -- I think a 99.8 percent cure rate of
17 it. I never have to worry about anything turning into
18 cancer or dying from it, anything. It's cured. And
19 it was my fault that I contracted Hepatitis C. I was
20 using intervenous drugs. I shouldn't have been. But
21 I've been clean for 10 years. And that's -- that's --
22 I'm extremely proud of that. 10 years from heroin
23 addiction is almost impossible most times. I haven't
24 relapsed in the slightest bit.

25 You know, it's -- I don't know what else

1 I can do to show that I've changed. You know, I -- I
2 got a plan together. I got volunteer work done that
3 I'd previously done before. I got a job, I got
4 everything that I could do to say I'm not just
5 free-wheeling it, here's what I want to do.

6 The five years probation, that's more
7 time than I could get under the guideline sentence.
8 That would only be three years supervised release, so
9 that gives me an additional two years to try and get
10 the restitution paid off. I wasn't trying to hide
11 anything.

12 And, you know, the 11,000 on commissary
13 was over a three-year period. And it wasn't me who
14 thought that it didn't apply. I was told by the BOP
15 that the 10 percent that I'm supposed to pay --
16 because I genuinely attempted to pay the 10 percent to
17 the BOP under the Financial Responsibility Program,
18 which is what the Court ordered me to do when I was
19 sentenced.

20 When I attempted to pay it, they said you
21 don't have to pay 10 percent of what you receive until
22 you're on supervised release. If you look at the
23 judgment, it could reasonably be construed that way.

24 THE COURT: Well, judgments usually say
25 that your repayment will begin under the Inmate

1 Financial Responsibility Program.

2 THE DEFENDANT: Which was 10 percent of
3 what I was trying to get in. At the time the contract
4 that I'd signed was for \$25 a quarter, but I genuinely
5 attempted to pay that. The money that I got on the
6 restitution (sic), I paid off my past child support.
7 The attorney that I hired, you know, was for the RDAP
8 time.

9 I had a detainer pop up from 2006 from
10 the original federal case, and they just -- they
11 wouldn't dismiss it, but I hired an attorney, took
12 care of it. Mr. Frensley for various things that he
13 did for me, he charged me about \$7,000 in fees. And
14 then he was paid another \$2,000 to attempt to take
15 care of the warrant, but he -- for one reason or
16 another, couldn't get it taken care of.

17 THE COURT: All right. You can sit down.
18 Unless you have something else you want to say.

19 THE DEFENDANT: That's it.

20 THE COURT: All right. Ms. Daughtrey,
21 did you have something you wanted to say?

22 MS. DAUGHTREY: Your Honor, I'm
23 empathetic with Mr. McWhorter having Hepatitis C and
24 wanting to treat it, but I think it's very interesting
25 that he is representing how desperate he is to treat

1 the Hepatitis C, and yet he had \$64,000 and not a
2 penny of that went to medical treatment. And he's got
3 this spend thrift trust, which it seems to me that
4 would cover medical expenses. So I'm a little puzzled
5 by those inconsistencies. I just wanted to point that
6 out.

7 THE COURT: I need some more information,
8 and that is, with the workup that he's already had,
9 the medical records that he already has, if I
10 recommended that he be sent to a medical facility, a
11 BOP medical facility, for Hepatitis C treatment, I
12 want to know what the BOP would say about that.

13 So I need that information before I'm
14 prepared to sentence him. And Ms. Winfree, can you
15 get that information or who should I task -- task with
16 that information?

17 MS. WINFREE: Your Honor, you may task
18 me.

19 THE COURT: I will task you.

20 MS. WINFREE: I will do my best to get
21 that information.

22 THE COURT: Can you get my calendars,
23 Ms. Beasley, for next week?

24 MS. WINFREE: I suspect they will have to
25 send his information off to determine which level of

1 medical care he qualifies for, but Your Honor is
2 saying if you put in the recommendation explicitly for
3 medical facility for treatment of hepatitis, what
4 would they do?

5 THE COURT: What would they do. And that
6 is because -- I mean, we have filed in the record of
7 the case, I believe, certain medical records. Do we
8 have the medical records from the person up in
9 Indiana? Mr. Holley, do you have the medical records
10 from the person in Indiana?

11 MR. HOLLEY: Your Honor, I have -- I do
12 have some. I gave them to Ms. Winfree. I'm not sure
13 if I --

14 MS. WINFREE: I have them in my
15 possession.

16 MR. HOLLEY: Your Honor, I did cite in my
17 memo the BOP's resource on evaluation and management
18 of chronic Hepatitis C.

19 THE COURT: What page of what memo?

20 MR. HOLLEY: This is the bottom of
21 page 7, Your Honor.

22 THE COURT: Is this your first memo?

23 MR. HOLLEY: Yes, Your Honor. I guess
24 I'm not an expert, but reading that -- that program
25 statement of theirs, it describes how severe the

1 Hepatitis C has to be. I think you have to have
2 cirrhosis, you have to have liver cancer, basically,
3 to get treatment. There are so many -- from reading
4 online, I've read prisons in general, state prisons,
5 federal prisons --

6 THE COURT: Everybody's struggling with
7 it.

8 MR. HOLLEY: So many people have Hep C
9 that if they paid \$85,000 for each person, there would
10 be no money left for the State to build roads or
11 anything. His medical records that we submitted says,
12 has 14 months left.

13 THE COURT: Says what?

14 MR. HOLLEY: Inmate wants treatment. Has
15 14 months left on sentence. We'll notify IDC in case
16 there is time. And then he didn't get the treatment.
17 This was submitted in our sealed document.

18 I mean, I guess I can't testify as an
19 expert about the BOP, but everything I read makes the
20 chance virtually nil that he is going to get treatment
21 from the BOP. They are not going to spend 85,000
22 extra dollars on Mr. McWhorter.

23 THE COURT: Is this the only treatment
24 for Hepatitis C is \$84,000 in drugs?

25 THE DEFENDANT: There's two. Your Honor,

1 there's two. There's -- you have the interferon
2 treatment, which is injections, and the cost of that
3 medication is probably around 30 to \$45,000. They
4 don't like to do that anymore because it's -- instead
5 of having a three-month treatment where with the
6 SOVALDI it's an six-month treatment and the inmate at
7 the time essentially has the flu for six months.

8 You know that achy feeling that you get
9 in your body when you get the flu, that's interferon,
10 and it -- apparently they found that it fights off the
11 Hepatitis C virus. Well, they constantly inject it
12 into you on a daily basis throughout that six-month
13 period coupled with the ribavirin, the same thing that
14 they use with the SOVALDI, the 1500 milligrams of
15 ribavirin, and then the Pegon interferon.

16 They consider that treatment almost
17 archaic at this point because it's so taxing on the
18 person's body that they go to the SOVALDI. The
19 guidelines that -- or the BOP policy that Mr. Holley
20 was speaking about, they talk about this SOVALDI and
21 how it's supposed to apply. If you -- if you have to
22 take off all the time remaining on the sentence or the
23 halfway house, when you do that, there's not enough
24 time left for them to give you the treatment based
25 upon the way the committee approves the pills.

1 You'd have to sentence me to almost four
2 years in order for me to get the treatment in the BOP,
3 even at a medical center, because the Tucson was a
4 Care Level III facility that I was at and that's
5 considered a medical center for patients with cancer
6 and things of that nature, but until you're to the
7 point that you're jaundiced and about to die, they're
8 just not going to give it to you. Like you said, it
9 just costs entirely too much money and it's the BOP.
10 They don't like to spend money.

11 THE COURT: Well, I'd like to have the
12 information anyway. You think you can have this by
13 Wednesday, Ms. Winfree?

14 MS. WINFREE: Next Wednesday, Your Honor?

15 THE COURT: Uh-huh (affirmative).

16 MS. WINFREE: I don't think that should
17 be a problem.

18 THE COURT: Or Thursday. Ms. Daughtrey,
19 are you still around on Wednesday and Thursday?

20 MS. DAUGHTREY: Your Honor, I'm not sure
21 if I will be or not.

22 THE COURT: When are you -- I know you
23 were going on a trip.

24 MS. DAUGHTREY: I'm scheduled to leave
25 Tuesday afternoon, but I can get somebody to cover if

1 you want to set it still this year.

2 I'm almost wondering if having them look
3 at the records that Mr. Holley has from Indiana might
4 not help them to make that decision because those are
5 more up to date than the information that we have
6 from -- and my understanding, it was about 500 pages.
7 I never saw it, but that's what Mr. Holley represented
8 to me. But that's, you know, over a year and a half
9 old at this point.

10 THE COURT: From Indiana?

11 MS. DAUGHTREY: No, from when he was at
12 the BOP previously.

13 THE COURT: 500 pages of BOP records.

14 MR. HOLLEY: There's 500 pages from the
15 BOP, Your Honor. There's only about five pages from
16 Michiana. You know, a few. It's only a couple pages
17 of tests, really.

18 THE COURT: Yeah. Well, but they could
19 see how it's developed if they see the Bureau of
20 Prisons records.

21 MR. HOLLEY: I understand that you'd like
22 an official answer, Your Honor. I suspect that
23 they're going to need to do more tests before they
24 decide where he is at this moment.

25 THE COURT: And they probably won't rely

1 on some other doctor's records, even if they're more
2 up to date than the BOP.

3 I'm going to take a short recess. I'll
4 be back.

5 (Whereupon, a break was taken from
6 4:43 p.m. to 4:51 p.m.)

7 THE COURT: All right. I'm going to
8 proceed with the sentencing. I don't -- I'm
9 pessimistic, as are all of you, that we will --
10 certainly won't get any commitment from the Bureau of
11 Prisons and we might not even be able to get any
12 reliable information.

13 The Court's obligation is to impose a
14 sentence that is sufficient but not greater than
15 necessary to comply with the purposes of the
16 sentencing statute, taking into account the nature and
17 circumstances of the offense and the history and
18 characteristics of the defendant.

19 Mr. McWhorter has pled guilty to escaping
20 from a halfway house in September of 2015, September 7
21 of 2015. He was placed there in June of 2015,
22 apparently did well there, had a job, and left after
23 he and his best friend were shot at, apparently, in
24 Nashville.

25 He says he panicked and they ran and they

1 went to Baltimore. And a month later his friend,
2 Mr. Nesbitt, was murdered in Baltimore and
3 Mr. McWhorter then went to Indiana, and apparently has
4 been living with a girlfriend in Indiana since then
5 and was arrested on May 25 of 2016.

6 This is obviously not the most serious
7 offense that comes before the Court, and even with a
8 Criminal History Category V, Mr. McWhorter's guideline
9 range is 12 to 18 months. But it does reflect a
10 disrespect and a lack of trust in the judicial system,
11 I guess, but mostly it reflects bad judgment and
12 disrespect of the judicial system.

13 Mr. McWhorter's explanation for why he
14 ran holds not very much water with the Court. On the
15 one hand he's telling us that he is just almost a
16 lawyer. He's writing briefs and working for lawyers
17 in Nashville and being paid for that work.

18 And then on the other hand he somehow
19 concluded that because he had been shot at -- he
20 didn't do any shooting, he didn't have a gun, that
21 because he had been shot at, somehow he would be taken
22 back into custody and wouldn't be able to stay at the
23 halfway house.

24 So that explanation makes little sense,
25 and it makes the Court suspect that there was

1 something more going on than Mr. McWhorter simply
2 being innocently shot at. At any rate, that would be
3 speculation on my part.

4 At any rate, he panicked, as he said,
5 because he was afraid he would be taken back into
6 custody, and he fled to Baltimore. Well, he was in
7 Baltimore for an entire month. I'm sure he wasn't in
8 the state of panic for an entire month.

9 He could have come to his senses and
10 realized if he were not involved in something in
11 Baltimore with his best friend, could have realized
12 that he made a big mistake, called his probation
13 officer, explained this innocent explanation that he
14 was simply shot at and did nothing wrong. But he
15 didn't do that.

16 And then after his friend was murdered,
17 then he fled to Indiana, where he was arrested many
18 months later cashing a check that was drawn on the
19 company that apparently, according to his own
20 admissions here, his lawyer's admissions, statements,
21 he had friends of his -- I'm wondering if this Alex
22 Friedmann -- the Court's very familiar with
23 Mr. Friedmann. Did Mr. Friedmann set up this company
24 for him?

25 MR. HOLLEY: No, Your Honor.

1 THE COURT: All right. Some other
2 friends set up the company for him, so that the
3 lawyers could pay this company for paralegal services
4 because he was not allowed to function as an
5 independent contractor while at the halfway house.

6 I also have some -- a lot of skepticism
7 about this little arrangement. I can't believe that
8 principal defense lawyers like Mr. Frensley would
9 engage in a scheme with Mr. McWhorter that
10 circumvented the rules of the halfway house, because
11 he was, in fact, functioning as an independent
12 contractor through a shell company that issued the
13 checks for his work. I find myself very skeptical of
14 all of this.

15 Not that he didn't do work for Chip
16 Frensley and other lawyers in town; I suspect that he
17 did. But whether they had any notion of what he was
18 doing and that he was violating the rules of the
19 halfway house by setting up a shell corporation, I
20 doubt it.

21 So he is caught and arrested in Indiana
22 when he tries to cash a check that is, what, six
23 months old on this shell corporation. And I'm not
24 supposed to think that this is not a fraudulent act?
25 I'm sorry, Mr. Holley, this was a fraudulent act.

1 This was an old check issued on a company
2 that I suspect wasn't even in existence because it
3 apparently was only in existence to pay Mr. McWhorter,
4 but it was issued six months ago. He just needed
5 money. And he either created the check or he found
6 the check that he had not cashed, which might or might
7 not have been legitimate in the first place.

8 At any rate, I'm not finding it was a --
9 I'm not finding it was a crime, but it's very shady,
10 let me put it that way, especially given
11 Mr. McWhorter's record of past identity theft,
12 creating false driver's licenses, paper hanging. Very
13 hard to describe somebody as a paper hanger, but I
14 think that applies to Mr. McWhorter over the course of
15 his career.

16 So it's very hard to believe that there
17 was anything legitimate about the cashing of this
18 check. I think he knew there was no money in the
19 account for that company at the time that he cashed
20 this check.

21 At any rate, so he's arrested and he's
22 brought back. I myself -- Ms. Daughtrey researched to
23 make sure that this doctor and his clinic was
24 legitimate. I myself had someone in my office do
25 research to make sure that these two Nashville lawyers

1 who supposedly are ready to hire him were legitimate,
2 because I've never heard of either of them and they're
3 not in the bar directory.

4 They both went to UT. They are
5 legitimate lawyers. I have no idea what they
6 practice, but they're legitimate, so he has a
7 legitimate job offer and good for him, and I hope he
8 can get that.

9 In terms of the health issues, I am
10 sensitive to them. I'm sympathetic to them, but as
11 Mr. McWhorter admitted to the Court and as we all
12 know, this is not a case where Mr. McWhorter
13 contracted Hepatitis C in jail by being infected with
14 it because of contagion in a jail. He has Hepatitis C
15 because he was an intravenous drug user. So this
16 condition was brought upon by his own actions.

17 There is an epidemic of Hepatitis C in
18 the prison systems as we speak. It's on the front
19 page of the paper within the last two weeks what
20 Tennessee's going to do about the epidemic of
21 Hepatitis C in the State institutions.

22 And I'm not sure what anybody's going to
23 do about it, but I cannot let his medical condition
24 that he brought on himself through illegal behavior
25 trump everything else in this case. And we will just

1 hope that Mr. McWhorter can get the necessary
2 treatment in time for him not to develop cirrhosis or
3 cancer of the liver.

4 I have no proof that Mr. McWhorter is in
5 the dire state that he tells me that he can run his
6 hand down his side and feel his liver. I hope that
7 that's not true. And I hope that it's not such a
8 fast-growing condition that it cannot be halted at
9 some point.

10 He certainly apparently at some point is
11 going to have some good resources to use to get the
12 drugs that he is going to find necessary.

13 In terms of his history and
14 characteristics, Mr. McWhorter is 37. He has a GED
15 and apparently has some college work. He at the young
16 age of 22 received a four-year sentence for forgery;
17 his 2009 federal conviction where he used counterfeit
18 driver's licenses to cash counterfeit payroll checks
19 to the tune of \$250,000.

20 Lots of fraudulent check charges in State
21 court were dismissed because of the federal charges
22 pending, and he certainly got a stiff sentence for
23 those federal charges. But he has quite a history of
24 fraudulent acts.

25 His parents, I guess, were both

1 alcoholics. His mother worked for the Department of
2 Defense, his father was a real estate agent. They
3 were divorced when he was three. He has had one
4 sibling who died in custody in 2011 at the age of 35.

5 Claims his mother physically abused him
6 as a child. He has been married three times. His
7 second wife was a codefendant in the federal case.
8 He's got two children, 19 and 18.

9 I'm glad that he has the job skills that
10 he has. I'm glad he has a job offer which I'm sure
11 will be available to him when he finishes this
12 sentence, but I simply cannot give the sentence
13 requested by the probation -- by the defense and give
14 him five years of probation for escaping from the
15 halfway house for reasons that make no sense and hold
16 no water with the Court.

17 So for all these reasons, I'm going to
18 give him a slight variance because of his medical
19 condition and I'm going to sentence him to eight
20 months in custody, to be followed by three years of
21 supervised release.

22 I don't levy a fine because I want him to
23 pay the restitution he owes in the other case, and I
24 feel that he could not pay both. No restitution is
25 due in this case. He must pay the \$100 special

1 assessment.

2 I feel that this sentence will reflect
3 the seriousness of the offense, promote respect for
4 the law, be a just punishment, protect the public from
5 further crimes of the defendant, and will avoid
6 unwarranted sentencing disparities among defendants
7 who have committed this crime in this district.

8 The special conditions of his supervised
9 release are drug testing and substance abuse treatment
10 and pay for it if he has financial resources. Mental
11 health program if determined advisable by the
12 probation office. He's to furnish all financial
13 records and tax returns. He's prohibited from owning,
14 carrying or possessing firearms, destructive devices
15 or other dangerous weapons. And he's to cooperate in
16 the collection of DNA.

17 I will recommend that he be placed in a
18 medical -- BOP medical facility and that he
19 immediately receive treatment for Hepatitis C.

20 Are there any other recommendations you'd
21 like me to make?

22 MR. HOLLEY: No, Your Honor.

23 THE COURT: And this eight months will be
24 consecutive to whatever's left on his other sentence.

25 Does anyone have objections to my sentence that have

1 not previously been raised?

2 MS. DAUGHTREY: No, Your Honor.

3 MR. HOLLEY: No, Your Honor.

4 THE COURT: Ms. Daughtrey, do you object
5 to my variance?

6 MS. DAUGHTREY: No, I do not, Your Honor.

7 THE COURT: There was no plea agreement
8 in this case. I want to inform Mr. McWhorter that he
9 has a right to appeal his sentence. Any appeal must
10 be filed within 14 days. You may apply to appeal
11 under the pauper's oath and the clerk will file your
12 notice of appeal if you request the clerk to do so.

13 I want to compliment Mr. Holley who
14 always does an excellent job on his cases, but he went
15 above and beyond. And you almost convinced me, but
16 you didn't. But you did an excellent job, and I hope
17 your client appreciates your hard work. We're in
18 recess.

19 (Which were all of the proceedings had in
20 the above-captioned cause on the above-captioned
21 date.)

REPORTER'S CERTIFICATE PAGE

I, Roxann Harkins, Official Court Reporter
for the United States District Court for the Middle
District of Tennessee, in Nashville, do hereby
certify:

That I reported on the stenographic machine
the proceedings held in open court on December 16,
2016, in the matter of UNITED STATES OF AMERICA v.
JAMES C. McWHORTER, Case No. 3:16-00162; that said
proceedings were reduced to typewritten form by me;
and that the foregoing transcript is a true and
accurate transcript of said proceedings.

This is the 7th day of June, 2017.

s/ Roxann Harkins_____
ROXANN HARKINS, RPR, CRR
Official Court Reporter